

REMARKS

This is intended as a full and complete response to the Final Office Action dated February 6, 2004 as modified by the Advisory Action dated April 29, 2004, and by filing of a Notice of Appeal on May 10, 2004. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-23 and 25 were cancelled by Applicant in a first response to final rejection mailed April 20, 2004, and the amendments were entered by the Examiner upon filing the Notice of Appeal. Reconsideration of the rejection of claim 24 is requested for reasons presented below.

Claim 24 stands rejected under 35 USC § 103(a) in view of *Ashjaee et al.* (US Patent Application Publication No. 2003/0029731) on grounds that the reference shows each element of claim 24 except the varying the magnitude which is obvious. Applicant respectfully traverses the rejection on the basis of a previously submitted Rule 131 Declaration which was considered by the Examiner. In the Advisory Action dated April 29, 2004 the Examiner found that Applicant's Rule 131 Declaration which accompanied the Response to Final Office Action dated February 6, 2004 was not persuasive. In particular the Examiner finds that the difference between *Ashjaee et al.* and claim 24 is "varying the magnitude of the second electrical bias relative to the first electrical bias as the metal layer is formed," and that Applicants' Declaration is deficient for failing to show possession of the varying the magnitude prior to the date of the reference. Applicant respectfully submits that the Examiner errs in requiring the Applicant's Declaration to show "varying the magnitude of the second electrical bias relative to the first electrical bias as the metal layer is formed."

In a telephone conference with the Examiner on May 18, 2004, Applicant directed the Examiner to MPEP 715.02 regarding how much of the claimed invention must be shown in the Declaration. The MPEP 715.02 states, in relevant part, that "where the differences between the claimed invention and the disclosure of the reference(s) are so small as to render the claims obvious over the reference(s), an affidavit or declaration under 37 CFR 1.131 is required to show no more than the

Page 3

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Atty. Dkt. No. AMAT/5262/CMP/CMP/RKK

reference shows." *In re Stryker*, 435 F.2d 1340 (CCPA 1971). Accordingly, Applicant submits that the Rule 131 Declaration already submitted is not required to show any more than the reference *Ashjaee et al.* shows.

To the extent reference *Ashjaee et al.* (US Patent Application Publication No. 2003/0029731) includes subject matter relied on by the Examiner in the rejection of pending claim 24, the submitted Rule 131 Declaration shows possession by Applicant of the same subject matter prior to October 11, 2000, the earliest date available to *Ashjaee et al.* Therefore *Ashjaee et al.* (US Patent Application Publication No. 2003/0029731) cannot be properly used as a reference to teach, show or suggest claimed aspects of the invention. Withdrawal of the rejection is respectfully requested.

In conclusion, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest the invention as claimed.

Having addressed all remaining issues set out in the Final Office Action, Applicant respectfully submits that claim 24 is in condition for allowance and respectfully requests that the claim be allowed.

Respectfully submitted,



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